

AMENDED IN ASSEMBLY JULY 15, 1997

AMENDED IN ASSEMBLY JULY 3, 1997

SENATE BILL

No. 471

Introduced by Senator Burton

February 19, 1997

An act to amend Sections 22002, 22115, 22119.2, 22134, 22146, 22155, 22456, 22664, 22701, 22710, 22711, 22713, 22901, 22903, 22904, 22950, 22951, 22952, 22954, 22955, 23000, 23002, 23005, 23008, 24001, 24005, 24205, and 24950 of the Education Code, relating to school employees.

LEGISLATIVE COUNSEL'S DIGEST

SB 471, as amended, Burton. School employee retirement.

The State Teachers' Retirement Law defines the term "creditable compensation" for various purposes.

The bill would revise that definition and make related changes.

Vote: majority. Appropriation: no. Fiscal committee: yes. State-mandated local program: no.

The people of the State of California do enact as follows:

1 SECTION 1. Section 22002 of the Education Code is
2 amended to read:
3 22002. The Legislature recognizes that the assets of
4 the State Teachers' Retirement System are insufficient to
5 meet the obligations of that system already accrued or to
6 accrue in the future in respect to service credited to

1 members of that system prior to July 1, 1972. Therefore,
2 the Legislature declares the following policies in respect
3 to the financing of the State Teachers' Retirement
4 System:

5 (a) Members shall contribute a percentage of
6 creditable compensation, unless otherwise specified in
7 this part.

8 (b) Employers shall contribute a percentage of the
9 total creditable compensation on which member
10 contributions are based.

11 (c) The state shall contribute a sum certain for a given
12 number of years for the purpose of payment of benefits.

13 SEC. 2. Section 22115 of the Education Code is
14 amended to read:

15 22115. (a) "Compensation earnable" means the
16 annual creditable compensation that a person would earn
17 in a school year if he or she were employed on a full-time
18 basis and if that person worked full time in that position.

19 (b) The board may determine compensation earnable
20 for persons employed on a part-time basis.

21 (c) For purposes of determining final compensation
22 for persons employed on a part-time basis, compensation
23 earnable shall be determined by dividing the creditable
24 compensation earned by the service credit.

25 SEC. 3. Section 22119.2 of the Education Code is
26 amended to read:

27 22119.2. (a) "Creditable compensation" means
28 salary and other remuneration payable in cash by an
29 employer to a member for creditable service. Creditable
30 compensation shall include:

31 (1) Money paid in accordance with a salary schedule
32 based on years of training and years of experience for
33 creditable service performed up to and including the
34 full-time equivalent for the position in which the service
35 is performed.

36 (2) For members not paid according to a salary
37 schedule, money paid for creditable service performed
38 up to and including the full-time equivalent for the
39 position in which the service is performed.



1 (3) Money paid for the member's absence from
2 performance of creditable service as approved by the
3 employer, except as provided in paragraph (7) of
4 subdivision (b).

5 (4) Member contributions picked up by an employer
6 pursuant to Section 22903 or 22904.

7 (5) Amounts deducted by an employer from the
8 member's salary, including deductions for participation
9 in a deferred compensation plan; deductions for the
10 purchase of annuity contracts, tax-deferred retirement
11 plans, or other insurance programs; and deductions for
12 participation in a plan that meets the requirements of
13 Section 125, 401(k), or 403(b) of Title 26 of the United
14 States Code.

15 (6) Money paid by an employer in addition to salary
16 paid under paragraph (1) or (2) if paid to all employees
17 in a class in the same dollar amount, the same percentage
18 of salary, *or* the same percentage of the amount being
19 distributed.

20 (7) Any other payments the board determines to be
21 "creditable compensation."

22 (b) "Creditable compensation" does not mean and
23 shall not include:

24 (1) Money paid for service performed in excess of the
25 full-time equivalent for the position.

26 (2) Money paid for overtime or summer school
27 service, or money paid for the aggregate service
28 performed as a member of this plan in excess of one year
29 of service credit for any one school year.

30 (3) Money paid for service that is not creditable
31 service pursuant to Section 22119.5.

32 (4) Money paid by an employer in addition to salary
33 paid under paragraph (1) or (2) if not paid to all
34 employees in a class in the same dollar amount, the same
35 percentage of salary, *or* the same percentage of the
36 amount being distributed.

37 (5) Fringe benefits provided by an employer.

38 (6) Job-related expenses paid or reimbursed by an
39 employer.

40 (7) Money paid for unused accumulated leave.

1 (8) Severance pay or compensatory damages or
2 money paid to a member in excess of creditable
3 compensation as a compromise settlement.

4 (9) Annuity contracts, tax-deferred retirement
5 programs, or other insurance programs, including, but
6 not limited to, plans that meet the requirements of
7 Section 125, 401(k), or 403(b) of Title 26 of the United
8 States Code that are purchased by an employer for the
9 member and are not deducted from the member's salary.

10 (10) Any payments determined by the board to have
11 been made by an employer for the principal purpose of
12 enhancing a member's benefits under the plan. An
13 increase in the salary of a member who is the only
14 employee in a class pursuant to subdivision (b) of Section
15 22112.5 that arises out of an employer's restructuring of
16 compensation during the member's final compensation
17 period shall be presumed to have been granted for the
18 principal purpose of enhancing benefits under the plan
19 and shall not be creditable compensation. If the board
20 determines sufficient evidence is provided to the system
21 to rebut this presumption, the increase in salary shall be
22 deemed creditable compensation.

23 (11) Any other payments the board determines not to
24 be "creditable compensation."

25 (c) Any employer or person who knowingly or
26 willfully reports compensation in a manner inconsistent
27 with subdivision (a) or (b) shall reimburse the plan for
28 any overpayment of benefits that occurs because of that
29 inconsistent reporting and may be subject to prosecution
30 for fraud, theft, or embezzlement in accordance with the
31 Penal Code. The system may establish procedures to
32 ensure that compensation reported by an employer is in
33 compliance with this section.

34 (d) The definition of "creditable compensation" in
35 this section is designed in accordance with sound funding
36 principles that support the integrity of the retirement
37 fund. These principles include, but are not limited to,
38 consistent treatment of compensation throughout the
39 career of the individual member, consistent treatment of
40 compensation for an entire class of employees, the



1 prevention of adverse selection, and the exclusion of
2 adjustments to, or increases in, compensation for the
3 principal purpose of enhancing benefits.

4 (e) This section shall be deemed to have become
5 operative on July 1, 1996.

6 SEC. 4. Section 22134 of the Education Code is
7 amended to read:

8 22134. (a) "Final compensation" means the highest
9 average annual compensation earnable by a member
10 during any period of three consecutive school years while
11 an active member of the plan or time during which he or
12 she was not a member but for which the member has
13 received credit under the plan, except time that was so
14 credited for service performed outside this state prior to
15 July 1, 1944. The last three consecutive years of
16 employment shall be used by the system in determining
17 final compensation unless designated to the contrary in
18 writing by the member.

19 (b) For purposes of this section, periods of service
20 separated by breaks in service may be aggregated to
21 constitute a period of three consecutive years, if the
22 periods of service are consecutive except for the breaks.

23 (c) The determination of final compensation of a
24 member who is also a member of the Public Employees'
25 Retirement System, the Legislators' Retirement System,
26 the University of California Retirement System, or the
27 San Francisco City and County Employees' Retirement
28 System shall take into consideration the compensation
29 earnable while a member of the other system, provided
30 that all of the following exist:

31 (1) The member was in state service or in the
32 employment of a local school district or of a county
33 superintendent of schools.

34 (2) Service under the other system was not performed
35 concurrently with service under this plan.

36 (3) Retirement under this plan is concurrent with the
37 member's retirement under the other system.

38 (d) The compensation earnable for the first position in
39 which California service is credited shall be used when
40 additional compensation earnable is required to

1 accumulate three consecutive years for the purpose of
2 determining final compensation under Section 23804.

3 (e) The board may specify a different final
4 compensation with respect to allowances based on
5 part-time service performed prior to July 1, 1956, for
6 which credit was given under this plan under board rules
7 in effect prior to that date.

8 (f) The board may specify a different final
9 compensation with respect to disability allowances,
10 disability retirement allowances, family allowances, and
11 children's portions of survivor benefit allowances payable
12 on and after January 1, 1978. The compensation earnable
13 for periods of part-time service shall be adjusted by the
14 ratio that part-time service has to full-time service.

15 (g) The amendment of former Section 22127 made by
16 Chapter 782 of the Statutes of 1982 does not constitute a
17 change in, but is declaratory of, the existing law.

18 SEC. 5. Section 22146 of the Education Code is
19 amended to read:

20 22146. (a) "Member" means any person, unless
21 excluded under other provisions of this part, who has
22 performed creditable service as defined in Section
23 22119.5 and has earned creditable compensation for that
24 service and has not received a refund for that service. A
25 member's rights and obligations under this part shall be
26 determined by the applicability of subdivision (b), (c),
27 (d), or (e) unless the member's rights and obligations are
28 determined under other provisions of this part.

29 ~~(a)–~~

30 (b) An active member is a member who is not retired
31 or disabled and who earns creditable compensation
32 during the school year.

33 ~~(b)–~~

34 (c) An inactive member is a member who is not
35 retired or disabled and who, by the pay period ending
36 June 30, has not earned creditable compensation during
37 the school year.

38 ~~(c)–~~

39 (d) A disabled member is a member to whom a
40 disability allowance is payable under Section 24006.



~~(d)~~

(e) A retired member is a member who has terminated employment and has retired for service under the provisions of Section 24204 or has retired for disability under the provisions of Section 24105, and to whom a retirement allowance is therefore payable.

SEC. 6. Section 22155 of the Education Code is amended to read:

22155. "Payroll" includes registers, warrants, and any other documents upon which the employer identifies persons to whom compensation is paid.

SEC. 7. Section 22456 of the Education Code is amended to read:

22456. At any time upon the request of the system, the employer shall furnish a statement of the amount of contributions deducted from the compensation of any member, the service performed and the compensation earned by the member since the end of the period covered by the last report of the employer. The system may use the information shown in the statement in determining contributions to be paid by or to the member or to a beneficiary, or use it in determining the member's status upon retirement, even though the member's and employer's contributions will not be received by the board until after the payment or determination.

SEC. 8. Section 22664 of the Education Code is amended to read:

22664. The nonmember spouse who is awarded a separate account shall have the right to a service retirement allowance.

(a) The nonmember spouse shall be eligible to retire for service if the following conditions are satisfied:

(1) The member had performed at least five years of creditable California service during the period of marriage, at least one year of which had been performed subsequent to the most recent refund to the member of accumulated retirement contributions, if five of the member's six years of credited service immediately before the dissolution or legal separation had been in

1 California. The credited service may include service
2 credited to the account of the member as of the date of
3 the dissolution or legal separation, previously refunded
4 service, and permissive service credit which the member
5 is eligible to purchase at the time of the dissolution or
6 legal separation.

7 (2) The nonmember spouse has at least two and
8 one-half years of credited service in his or her separate
9 account.

10 (3) The nonmember spouse has attained the age of 55
11 years or more.

12 (b) A service retirement allowance of a nonmember
13 spouse shall become effective upon any date designated
14 by the nonmember spouse, provided:

15 (1) The requirements of subdivision (a) are satisfied.

16 (2) The nonmember spouse has filed an application for
17 service retirement on a form provided by the system,
18 which is executed no earlier than six months before the
19 effective date of the retirement allowance.

20 (3) The effective date is no earlier than the first day of
21 the month in which the application is received at the
22 system's office in Sacramento and the effective date is
23 after the date the judgment was entered.

24 (c) Upon service retirement at or over normal
25 retirement age, the nonmember spouse shall receive a
26 retirement allowance that shall consist of an annual
27 allowance payable in monthly installments equal to 2
28 percent of final compensation for each year of credited
29 service. If the nonmember spouse's retirement is
30 effective at less than normal retirement age and between
31 early retirement age and normal retirement age, the
32 retirement allowance shall be reduced by one-half of 1
33 percent for each full month, or fraction of a month, that
34 will elapse until the nonmember spouse would have
35 reached normal retirement age.

36 (1) In computing the retirement allowance of the
37 nonmember spouse, the age of the nonmember spouse on
38 the last day of the month in which the retirement
39 allowance begins to accrue shall be used.

(2) Final compensation, for purposes of calculating the service retirement allowance of the nonmember spouse under this subdivision, shall be calculated according to the definition of final compensation in Section 22134 or Section 22135, whichever is applicable, and shall be based on the compensation earnable of the member up to the date the parties separated, as established in the judgment or court order pursuant to Section 22652.

The nonmember spouse shall not be entitled to use any other calculation of final compensation.

(d) If the member is or was receiving a disability allowance with an effective date before or on the date the parties separated as established in the judgment or court order pursuant to Section 22652, or at any time applies for and receives a disability allowance with an effective date that is before or coincides with the date the parties separated as established in the judgment or court order pursuant to Section 22652, the nonmember spouse shall not be eligible to retire until after the disability allowance of the member terminates.

If the member who is or was receiving a disability allowance returns to employment to perform creditable service subject to coverage by the plan or has his or her allowance terminated under Section 24015, the nonmember spouse may not be paid a retirement allowance until at least six months after termination of the disability allowance and the return of the member to employment to perform creditable service subject to coverage by the plan, or the termination of the disability allowance and the employment or self-employment of the member in any capacity, notwithstanding Section 22132. If at the end of the six-month period, the member has not had a recurrence of the original disability or has not had his or her earnings fall below the amounts described in Section 24015, the nonmember spouse may be paid a retirement allowance if all other eligibility requirements are met.

(1) The retirement allowance of the nonmember spouse under this subdivision shall be calculated as follows: the disability allowance the member was

1 receiving, exclusive of the benefits for dependent
2 children, shall be divided between the share of the
3 member and the share of the nonmember spouse. The
4 share of the nonmember spouse shall be the amount
5 obtained by multiplying the disability allowance,
6 exclusive of the benefits for dependent children, by the
7 years of service credited to the separate account of the
8 nonmember spouse, including service projected to the
9 date of separation, and dividing by the projected service
10 of the member. The nonmember spouse's retirement
11 allowance shall be the lesser of the share of the
12 nonmember spouse under this subdivision or the
13 retirement allowance under subdivision (c).

14 (2) The share of the member shall be the total
15 disability allowance reduced by the share of the
16 nonmember spouse. The share of the member shall be
17 considered the disability allowance of the member for
18 purposes of Section 24213.

19 (e) The nonmember spouse who receives a
20 retirement allowance is not a retired member. However,
21 the allowance of the nonmember spouse shall be
22 increased by application of the improvement factor and
23 shall be eligible for the application of supplemental
24 increases and other benefit maintenance provisions,
25 including, but not limited to, Sections 24411, 24412, and
26 24415 based on the same criteria used for the application
27 of these benefit maintenance increases to the service
28 retirement allowances of members.

29 SEC. 9. Section 22701 of the Education Code is
30 amended to read:

31 22701. (a) Service performed prior to July 1, 1972,
32 shall be credited according to the provisions of law in
33 effect at the time service was performed.

34 (b) Service performed on or after July 1, 1972, shall be
35 credited in the proportion that creditable compensation
36 earned by the member bears to the member's
37 compensation earnable.

38 SEC. 10. Section 22710 of the Education Code is
39 amended to read:



1 22710. (a) Service shall be credited, upon payment of
2 the contributions required under Sections 22901 and
3 22950, for that time during which a member is excused
4 from performance of creditable service and for which the
5 member receives workers' compensation, or
6 compensation from an insurance carrier of the employer,
7 due to injury or illness that arose out of and in the course
8 of the member's employment. Service for that time shall
9 be credited in the proportion that the creditable
10 compensation paid to the member bears to the
11 compensation earnable by the member.

12 (b) The amount of creditable compensation paid to
13 the member shall not exceed the compensation earnable
14 by the member during the period of absence specified in
15 subdivision (a).

16 SEC. 11. Section 22711 of the Education Code is
17 amended to read:

18 22711. (a) A member shall be granted service credit
19 for time during which the member serves as an elected
20 officer of an employee organization while on a
21 compensated leave of absence pursuant to Section 44987
22 or 87768.5, if all of the following conditions are met:

23 (1) The member was employed and performed
24 creditable service subject to coverage by the plan in the
25 month prior to commencement of the leave of absence.

26 (2) The member makes contributions to the Teachers'
27 Retirement Fund in the amount that the member would
28 have contributed had the member performed creditable
29 service on a full-time basis during the period the member
30 served as an elected officer of the employee organization.

31 (3) The member's employer contributes to the
32 Teachers' Retirement Fund at a rate specified by the
33 board an amount based upon the creditable
34 compensation that would have been paid to the member
35 had the member performed creditable service on a
36 full-time basis during the period the member served as an
37 elected officer of the employee organization.

38 (b) The maximum period of time ~~for~~ during which a
39 member ~~can be granted service credit~~ may serve as an

1 *elected officer and receive service credit* pursuant to this
2 section shall not exceed 12 *calendar* years.

3 SEC. 12. Section 22713 of the Education Code is
4 amended to read:

5 22713. (a) Notwithstanding any other provision of
6 this chapter, the governing board of a school district or a
7 community college district or a county superintendent of
8 schools may establish regulations that allow an employee
9 who is a member to reduce his or her workload from full
10 time to part time, and receive the service credit the
11 member would have received if the member had been
12 employed on a full-time basis and have his or her
13 retirement allowance, as well as other benefits that the
14 member is entitled to under this part, based, in part, on
15 final compensation determined from the compensation
16 earnable the member would have been entitled to if the
17 member had been employed on a full-time basis.

18 (b) The regulations shall include, but shall not be
19 limited to, the following:

20 (1) The option to reduce the member's workload shall
21 be exercised at the request of the member and can be
22 revoked only with the mutual consent of the employer
23 and the member.

24 (2) The member shall have been employed full time
25 to perform creditable service subject to coverage by the
26 plan for at least 10 years including five years immediately
27 preceding the reduction in workload.

28 (3) The member shall not have had a break in service
29 during the five years immediately preceding the
30 reduction in workload. For purposes of this subdivision,
31 sabbaticals and other approved leaves of absence shall not
32 constitute a break in service. However, time spent on a
33 sabbatical or other approved leave of absence shall not be
34 used in computing the five-year full-time service
35 requirement prescribed by this subdivision.

36 (4) The member shall have reached the age of 55 years
37 prior to the reduction in workload.

38 (5) The period of the reduced workload shall not
39 exceed 10 years.

(6) The reduced workload shall be equal to *at least* one-half of the full-time equivalent required by the member's contract of employment during his or her final year of full-time employment.

(7) The member shall be paid a *creditable* compensation that is the pro rata share of the *creditable* compensation the member would have been paid had the member not reduced his or her workload.

(c) Prior to the reduction of a member's workload under this section, the employer in conjunction with the administrative staff of the State Teachers' Retirement System and the Public Employees' Retirement System, shall verify the member's eligibility for the reduced workload program.

(d) The member shall make contributions to the Teachers' Retirement Fund in the amount that the member would have contributed had the member performed creditable service on a full-time basis.

(e) The employer shall contribute to the Teachers' Retirement Fund at a rate specified by the board an amount based upon the creditable compensation that would have been paid to the member had the member performed creditable service on a full-time basis.

(f) The employer shall maintain the necessary records to separately identify each member who participates in the reduced workload program pursuant to this section.

SEC. 13. Section 22901 of the Education Code is amended to read:

22901. Each member of the plan shall contribute to the retirement fund an amount equivalent to 8 percent of the member's creditable compensation.

SEC. 14. Section 22903 of the Education Code is amended to read:

22903. Notwithstanding Sections 22901, 22956, and 23000, each school district, community college district, county board of education, and county superintendent of schools, may pick up, for the sole purpose of deferring taxes, as authorized by Section 414(h)(2) of the Internal Revenue Code of 1986 (26 U.S.C.A. Sec. 414(h)(2)) and Section 17501 of the Revenue and Taxation Code, all of

1 the contributions required to be paid by a member of the
2 plan, provided that the contributions are deducted from
3 the creditable compensation of the member.

4 SEC. 15. Section 22904 of the Education Code is
5 amended to read:

6 22904. Notwithstanding any other provision of law,
7 the state may pick up all or a portion of the contributions
8 required to be paid by a state employee who is a member
9 of the plan, provided that the contributions are deducted
10 from the creditable compensation of the member. The
11 pick up of member contributions shall be through a salary
12 reduction program pursuant to Section 414(h)(2) of the
13 Internal Revenue Code of 1986 (26 U.S.C.A. Sec.
14 414(h)(2)). These contributions shall be reported as
15 employer-paid member contributions, and shall be
16 credited to the account of the member.

17 SEC. 16. Section 22950 of the Education Code is
18 amended to read:

19 22950. Employers shall contribute monthly to the
20 Teachers' Retirement Fund 8 percent of the creditable
21 compensation upon which members' contributions are
22 based.

23 SEC. 17. Section 22951 of the Education Code is
24 amended to read:

25 22951. In addition to any other contributions required
26 by this part, employers shall contribute monthly to the
27 Teachers' Retirement Fund 0.25 percent of the creditable
28 compensation upon which members' contributions are
29 based.

30 SEC. 18. Section 22952 of the Education Code is
31 amended to read:

32 22952. (a) Effective January 1, 1980, in addition to all
33 other contributions required by this part, on account of
34 liability for benefits pursuant to Section 24407, employers
35 shall contribute monthly to the Teachers' Retirement
36 Fund 0.307 percent of the creditable compensation upon
37 which members' contributions are based.

38 (b) The Controller shall adjust the contributions
39 required by this section within 10 days of notification by
40 the board of the actual creditable compensation on which

the contributions are based. A copy of the notification shall be transmitted to the Legislature, the Director of Finance, the Office of the Legislative Analyst, and the Commission on State Mandates. The payroll data shall be subject to audit by the Controller pursuant to Section 17558.5 of the Government Code.

SEC. 19. Section 22954 of the Education Code is amended to read:

22954. (a) In addition to any other contributions required by this part, on July 1, 1990, and on July 1 of each subsequent year, the Controller, subject to Section 24414, shall transfer, based on estimated payroll data provided by the board, the following percentages of the total of the prior year creditable compensation upon which members' contributions are based to the Supplemental Benefit Maintenance Account in the Teachers' Retirement Fund, for the purpose of funding the supplemental payments authorized under Section 24415:

(1) For the fiscal year ending June 30, 1991	0.50%
(2) For the fiscal year ending June 30, 1992	1.00%
(3) For the fiscal year ending June 30, 1993	1.50%
(4) For the fiscal year ending June 30, 1994	2.00%
(5) For the fiscal year ending June 30, 1995, and each fiscal year thereafter	2.50%

These transfers shall be based upon estimated payroll data provided to the Director of Finance by the board and shall be adjusted in January of that same fiscal year to reflect actual payroll data.

(b) The board may deduct from the annual state contributions made pursuant to this section an amount necessary for the administrative expenses to implement Section 24415, subject to the annual Budget Act.

(c) Notwithstanding any other provision of law, it is the intent of the Legislature, in establishing the Supplemental Benefit Maintenance Program embodied in this section and Sections 22400, 24414, and 24415, to manifest a contractually enforceable promise to repay the Teachers' Retirement Fund in full, with interest, as

1 provided in subdivision (b) of Section 24414, for all
2 transfers or advances made from the Teachers'
3 Retirement Fund pursuant to subdivision (a) of Section
4 24414 and for any funds appropriated by Item No.
5 1920-111-835 of the Budget Act of 1989 from the Teachers'
6 Retirement Fund to provide purchasing power
7 protection payments.

8 (d) Except as provided in subdivision (c), the
9 Legislature reserves the right to reduce or terminate the
10 state's contributions to the Supplemental Benefit
11 Maintenance Account in the Teachers' Retirement Fund
12 provided by this section and to reduce or terminate the
13 distributions required by Section 24415. It is intended that
14 any legislative reduction or termination of the state's
15 contributions to the Supplemental Benefit Maintenance
16 Account in the Teachers' Retirement Fund provided by
17 this section or any reduction or termination of
18 distributions required by Section 24415, shall be
19 effectuated by a separate statute rather than by the
20 annual Budget Act.

21 SEC. 20. Section 22955 of the Education Code is
22 amended to read:

23 22955. (a) Notwithstanding Section 13340 of the
24 Government Code, commencing October 1, 1991, a
25 continuous appropriation is hereby made from the
26 General Fund to the Controller, pursuant to this section,
27 for transfer to the Teachers' Retirement Fund. The total
28 amount of the appropriation for each year shall be equal
29 to 4.3 percent of the total of the creditable compensation
30 of the immediately preceding calendar year upon which
31 members' contributions are based, to be calculated
32 annually on October 1, and shall be divided into four
33 equal quarterly payments. The percentage shall be
34 adjusted to reflect the contribution required to fund the
35 normal cost deficit when the unfunded obligation has
36 been deemed to be eliminated by the board based upon
37 a recommendation from its actuary. If a rate increase or
38 decrease is required, the adjustment may be for no more
39 than 0.25 percent per year and in no case may the transfer
40 exceed 4.3 percent of the total of the creditable

1 compensation of the immediately preceding calendar
2 year upon which members' contributions are based.

3 (b) The funds transferred pursuant to subdivision (a)
4 shall first be applied to meeting the normal cost deficit,
5 if any, for that fiscal year.

6 (c) The transfers made pursuant to this section are in
7 lieu of the state contributions formerly made pursuant to
8 Sections 23401 and 23402.

9 (d) For the purposes of this section, the term "normal
10 cost deficit" means the difference between the normal
11 cost rate as determined in the actuarial valuation
12 required by Section 22226 and the total of the member
13 contribution rate required under Section 22804 and the
14 employer contribution rate required under Section
15 23400, and shall exclude (1) the portion for unused sick
16 leave service granted pursuant to Section 22719, and (2)
17 the cost of benefit increases which occur after July 1, 1990.
18 The contribution rates prescribed in Section 22804 and
19 Section 23400 on July 1, 1990, shall be utilized to make the
20 calculations. The normal cost deficit shall then be
21 multiplied by the total of the creditable compensation
22 upon which member contributions are based to
23 determine the dollar amount of the normal cost deficit for
24 the year.

25 (e) Pursuant to Section 22001 and the case law, the
26 members are entitled to a financially sound retirement
27 system. The Legislature recognizes that the system shall,
28 pursuant to this act, receive less funds in the short term
29 than it would have received under former Sections 23401
30 and 23402 (Chapter 282 of the Statutes of 1979). However,
31 it is the intent of the Legislature that this section shall
32 provide the retirement fund stable and full funding over
33 the long term.

34 (f) This section continues in effect but in a somewhat
35 different form, fully performs, and does not in any way
36 unreasonably impair, the contractual obligations
37 determined by the court in California Teachers'
38 Association v. Cory, 155 Cal. App. 3d 494.

39 (g) This section shall not be construed to be applicable
40 to any unfunded liability resulting from any benefit

1 increase or change in contribution rate that occurs after
2 July 1, 1990.

3 (h) The amendments to this section during the
4 1991–92 Regular Session shall be construed and
5 implemented to be in conformity with the judicial intent
6 expressed by the court in California Teachers' Association
7 v. Cory, 155 Cal. App. 3d 494.

8 SEC. 21. Section 23000 of the Education Code is
9 amended to read:

10 23000. Each employer shall deduct from the
11 creditable compensation of members of ~~the plan~~
12 employed by the employer the member contributions
13 required by this part and shall remit to the ~~plan~~ system
14 those contributions plus the employer contributions
15 required by this part and Section 44987.

16 SEC. 22. Section 23002 of the Education Code is
17 amended to read:

18 23002. Member and employer contributions required
19 by this part and Section 44987 are due in the office of the
20 system five working days immediately following the
21 period covered by the monthly report upon which the
22 compensation earned during the period is being reported
23 and from and upon which the contributions are due.
24 Payments shall be delinquent on the sixth working day
25 thereafter and regular interest on delinquent payments
26 shall begin to accrue as of that day. The board shall
27 authorize estimated payments of not less than 95 percent
28 of the contributions due, and, in that case, the balance of
29 contributions payable shall be due in the office of the
30 system no more than 15 working days following the
31 period covered by the monthly report upon which the
32 contributions are based. This additional payment shall be
33 delinquent on the 16th working day thereafter, and
34 regular interest shall begin to accrue as of that day.

35 SEC. 23. Section 23005 of the Education Code is
36 amended to read:

37 23005. Monthly reports are due in the office of the
38 system 30 calendar days immediately following the
39 month in which the compensation being reported was

1 earned, and are delinquent 15 calendar days immediately
2 thereafter.

3 SEC. 24. Section 23008 of the Education Code is
4 amended to read:

5 23008. (a) If more or less than the required
6 contributions specified in this part and Section 44987 are
7 paid to the system based on any payment of creditable
8 compensation to a member, proper adjustments shall be
9 made by the county superintendent or other employing
10 agency on a monthly report within 60 days of discovery
11 or of notification by the system and any refunds shall be
12 made to the member within the same time period by the
13 employing agency.

14 (b) The board may assess penalties for late or
15 improper adjustments pursuant to Section 23006. These
16 penalties shall be no more than the regular interest as
17 defined in Section 22162. The penalty so assessed shall be
18 deemed interest earned in the year in which it was
19 received.

20 (c) If a required report contains erroneous
21 information and the system, acting in good faith,
22 disburses funds from the Teacher's Retirement Fund
23 based on that information, the county superintendent or
24 other employing agency who submitted the report shall
25 reimburse the retirement fund in full for the amount of
26 the erroneous disbursement. Reimbursement shall be
27 made immediately upon notification by the system.

28 SEC. 25. Section 24001 of the Education Code is
29 amended to read:

30 24001. (a) A member may apply for a disability
31 allowance if the member has five or more years of
32 credited service and if all of the following requirements
33 are met:

34 (1) At least four years were credited for actual
35 performance of service subject to coverage by the plan.
36 Credit received because of workers' compensation
37 payments shall be counted toward the four-year
38 requirement in accordance with Section 22710.

39 (2) The last five years of credited service were
40 performed in this state.

(3) At least one year was credited for service performed subsequent to the date on which the member terminated the service retirement allowance under Section 24208.

(4) At least one year was credited for service performed subsequent to the most recent refund of accumulated retirement contributions.

(5) The member has not attained normal retirement age, or has sufficient unused sick leave days for the member to receive creditable compensation on account of sick leave usage to normal retirement age.

(6) The member is not applying for a disability allowance because of a physical or mental condition known to exist at the time the most recent membership in the plan commenced and that remains substantially unchanged at the time of application.

(b) Nothing in this section shall affect the right of a member to a disability allowance if the reason that the member is credited with less than four years of actual service performed subject to coverage by the plan is due to an on-the-job injury or a disease that occurred while the member was employed.

(c) A member shall not be eligible for disability under this plan while on a leave of absence to serve as a full-time elected officer of an employee organization, even if the member is receiving service credit under Section 22711.

SEC. 26. Section 24005 of the Education Code is amended to read:

24005. (a) A disability allowance shall become effective upon any date designated by the member, provided all of the following conditions are met:

(1) An application for disability allowance is filed on a form provided by the system.

(2) The effective date is later than the last day of creditable service for which compensation is payable to the member.

(3) The effective date is no earlier than either the first day of the month in which the application is received by the system's office in Sacramento, or the date upon and continuously after which the member is determined to

1 the satisfaction of the board to have been mentally
2 incompetent.

3 (b) If the member is employed to perform creditable
4 service subject to coverage by the plan at the time the
5 disability allowance is approved, the member shall notify
6 the system in writing, within 90 days, of the last day on
7 which the member will perform service. If the member
8 does not respond within 90 days, or if the last day on which
9 service will be performed is more than 90 days after the
10 date the system notifies the member of approval of the
11 disability allowance, the member's application for a
12 disability allowance shall be rejected and a disability
13 allowance shall not be payable to the member.

14 SEC. 27. Section 24205 of the Education Code is
15 amended to read:

16 24205. (a) The board shall, in consultation with
17 members, develop, adopt, and implement an additional
18 early retirement alternative that will allow a member to
19 receive a minimum retirement allowance prior to normal
20 retirement age if the member has at least attained early
21 retirement age. Under the alternative, the member shall
22 continue to receive the minimum retirement allowance
23 past normal retirement age until the total amount paid
24 prior to normal retirement age equals the difference
25 between the minimum retirement allowance and the
26 retirement allowance that would have been paid to the
27 member under Section 24202 or 24203, whichever is
28 applicable, at normal retirement age, and thereafter the
29 service retirement allowance for normal retirement age
30 shall be paid. The board shall determine the age past
31 normal retirement at which the increase will be made by
32 determining how long the minimum retirement
33 allowance would have to be paid beyond age 60 years in
34 order for the amount paid prior to age 60 years to equal
35 the difference between the minimum retirement
36 allowance and the allowance that would have been paid
37 to the member under service retirement at normal
38 retirement age. The board shall integrate the early
39 retirement alternative adopted under this section with

1 the other early retirement alternatives that a member
2 may elect under this chapter.

3 (b) For the purposes of this section, all contributions,
4 liabilities, actuarial interest rates, and other valuation
5 factors shall be determined on the basis of actuarial
6 assumptions and methods which, in the aggregate, are
7 reasonable and which, in combination, offer the actuary's
8 best estimate of anticipated experience under the plan.

9 (c) The additional employer contributions required, if
10 any, under this section shall be computed as a level
11 percentage of creditable compensation. The additional
12 contribution rate required, if any, shall not be less than
13 the sum of (1) the actuarial normal cost, plus (2) the
14 additional contribution required to amortize the increase
15 in accrued liability attributable to benefits elected under
16 this section over a period of not more than 30 years from
17 January 1, 1979.

18 SEC. 28. Section 24950 of the Education Code is
19 amended to read:

20 24950. An annuity contract and custodial account as
21 described in Section 403(b) of the Internal Revenue
22 Code of 1986 shall be offered to all employees of any state
23 agency who are members of the plan or any employee of
24 a local public agency or political subdivision of this state
25 that employs persons to perform creditable service
26 subject to coverage by the plan. The following criteria
27 shall apply to that annuity contract and custodial account:

28 (a) The annuity contract and custodial account shall
29 be offered for at least five years.

30 (b) The annuity contract and custodial account may
31 be administered by a qualified third-party administrator
32 that shall, under agreement with the system, provide
33 custodial, investment, recordkeeping, or administrative
34 services, or any combination thereof. The third-party
35 administrator shall not provide investment options.

36 (c) The investment options offered shall be
37 determined by the board consistent with those annuity
38 contract and custodial accounts described in Section
39 403(b) of the Internal Revenue Code of 1986.

1 (d) The system's investment staff shall make
2 recommendations to the board as to the appropriate
3 investment options. At a minimum, the board shall offer
4 at least three investment options. The board shall have
5 sole responsibility for the selection of service providers.

6 (e) All contributions made in accordance with the
7 provisions of Section 403(b) of the Internal Revenue
8 Code of 1986 and this section shall be remitted directly to
9 the administrator and held by the administrator in a
10 custodial account on behalf of the employee. Any
11 investment gains or losses shall be credited to those
12 accounts. The forms of payment and disbursement
13 procedure shall be consistent with those generally
14 offered by similar annuity contracts and custodial
15 accounts and applicable federal and state statutes
16 governing those contracts and accounts.

17 (f) Any employer, other than the state, may elect to
18 make contributions to the employee's annuity contract
19 and custodial account on behalf of the employee. The
20 employer shall take whatever action is necessary to
21 implement this section, including the adoption of an
22 annuity contract and custodial account, or provide the
23 appropriate authorization in accordance with the
24 provision of Section 403(b) of the Internal Revenue Code
25 of 1986. Employer contributions made under this section
26 are excluded from the definition of creditable
27 compensation as provided in Section 22119.2.

28 (g) The design and administration of the annuity
29 contract and custodial account shall comply with the
30 applicable provisions of the Internal Revenue Code of
31 1986 and the Revenue and Taxation Code. Section 770.3
32 of the Insurance Code shall not be applicable.

